

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ODELL GENE GOLDEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:14CV706
	)	
CITY OF GRAHAM COUNTY,	)	
NORTH CAROLINA,	)	
	)	
Defendant(s).	)	

**ORDER**

This matter is before this court for review of the Recommendation ("Recommendation") filed on August 21, 2014, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b) (Doc. 3). In the Recommendation, the Magistrate Judge recommended that this action be dismissed pursuant to 28 U.S.C. §1915A for failing to state a claim upon which relief may be granted. The Recommendation was served on the parties to this action on August 21, 2014 (Doc. 4). On September 15, 2014, Plaintiff filed untimely objections (Doc. 5) to the Recommendation. See Fed. R. Civ. P. 72(b)(2) ("Within 14 days after being served with a copy of the recommended disposition, a party may serve and file . . . objections."). The court will take into consideration Plaintiff's objections.

Prior to this court reviewing the objections and making a de novo determination, on December 11, 2014, the Magistrate Judge entered a Text Order staying the case in light of the pendency of a parallel § 2255 action and consistent with Wallace v. Kato, 549 U.S. 384 (2007), and a Text Order withdrawing the Recommendation.

On September 4, 2015, a second Recommendation was filed by the Magistrate Judge in accordance with 28 U.S.C. § 636(b) (Doc. 18). In the Recommendation, the Magistrate Judge ordered that the stay previously entered in light of Plaintiff's § 2255 motion be lifted and that the prior Recommendation (Doc. 3) be reinstated. The Magistrate Judge also recommended that this action be dismissed pursuant to 28 U.S.C. §1915A for failing to state a claim upon which relief may be granted. The Recommendation was served on the parties to this action on September 4, 2015 (Doc. 19). Plaintiff filed timely objections (Doc. 20) to the Recommendation.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made

by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendations to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendations. This court therefore adopts the Recommendations.

**IT IS THEREFORE ORDERED** that the Magistrate Judge's Recommendations (Docs. 3, 18) are **ADOPTED**. **IT IS FURTHER ORDERED** that this action is **DISMISSED** pursuant to 28 U.S.C. § 1915A for failing to state a claim upon which relief may be granted.

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 2nd day of November, 2015.

  
\_\_\_\_\_  
United States District Judge